

§ 389.39

he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.39 Direct final rulemaking procedures

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the FEDERAL REGISTER.

(a) *Types of actions appropriate for direct final rulemaking.* Rules that the Administrator determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the FEDERAL REGISTER as direct final rules. These include non-controversial rules that:

- (1) Make non-substantive clarifications or corrections to existing rules;
- (2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;
- (3) Affect internal FMCSA procedures such as filing requirements and rules governing inspection and copying of documents;
- (4) Update existing forms; and
- (5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

(b) *Adverse comment.* An adverse comment is a comment that FMCSA judges to be critical of the rule, to suggest that the rule should not be adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

49 CFR Ch. III (10–1–10 Edition)

(1) Comments recommending another rule change, unless the commenter states that the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the FEDERAL REGISTER, if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) *Withdrawal of a direct final rule.*

(1) If FMCSA receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the FEDERAL REGISTER, before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

[75 FR 29916, May 28, 2010]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Subpart A—General Applicability and Definitions

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- 390.1 Purpose.
- 390.3 General applicability.
- 390.5 Definitions.
- 390.7 Rules of construction.

Subpart B—General Requirements and Information

- 390.9 State and local laws, effect on.
- 390.11 Motor carrier to require observance of driver regulations.
- 390.13 Aiding or abetting violations.
- 390.15 Assistance in investigations and special studies.